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CORPORATE INTEGRITY AGREEMENT

This Corporate Integrity Agreement is entered into among Sacred Heart Hospital in Pensacola, Florida; St. Thomas Hospital in Nashville, Tennessee; St. Vincent Hospital in Birmingham, Alabama and, St. Mary's Hospital in Saginaw, Michigan; (collectively, "the Hospitals"); the Daughters of Charity National Health System ("DCNHS") and the Office of Inspector General of the Department of Health and Human Services ("OIG"). Pursuant to this Agreement, the Hospitals and DCNHS agree to undertake the compliance provisions outlined below.

I. Preamble

Daughters of Charity National Health System (DCNHS), an entity related to the Hospitals, hereby agrees that it will do nothing in its capacity as a related entity of the Hospitals that will interfere with, or diminish, the Hospitals' ability to discharge the Hospitals' corporate integrity obligations under this Agreement. Accordingly, DCNHS will take all reasonable steps, in its capacity as a related entity of the Hospitals to promote compliance with the terms of the Agreement by the Hospitals.

The Hospitals and DCNHS agree to implement this Corporate Integrity Agreement (the "Agreement") so as to ensure, to the extent reasonably possible, that the Hospitals and each of their directors, officers, employees and contractors maintain the business integrity required of a participant in Medicare, Medicaid and other federal health care programs, as defined in 42 U.S.C. 1320a-7b(f), and that the Hospitals are in compliance with all laws and regulations applicable to such programs and with the terms of this Agreement. The period of future integrity obligations assumed by the Hospitals under this Agreement shall be five (5) years from the date of execution of this Agreement. The date of execution of this Agreement is the date the final signature is obtained.

II. Corporate Responsibility Programs

The Hospitals agree to continue to implement and maintain their voluntary "Corporate Responsibility Programs" which have been adopted by the Hospitals' respective Boards of Directors. These documents are attached to this Agreement,

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and incorporated by reference, as Attachments A, B, C and D, respectively. To the extent that any of the obligations required by this Agreement replicate provisions contained in the attached Corporate Responsibility Programs, those provisions are deemed acceptable for the purpose of the Hospitals meeting their obligations under this Agreement.

III. CORPORATE INTEGRITY PROGRAM

Within one hundred twenty (120) days of the date of execution of this Agreement, the Hospitals agree to implement a Corporate Integrity Program (the "Program"), which shall include the provisions listed herein. Within one hundred fifty (150) days of the date of execution of this Agreement, the Hospitals will provide the Corporate Responsibility Officer ("CRO") of DCNHS with an Interim Report demonstrating that the Hospitals have complied with all of the Program's requirements contained in Sections III. A, D, E, F and G of this Agreement. The Interim Report shall also identify the Compliance Officer and the members of the Compliance Committee.

A. CORPORATE COMPLIANCE COMMITTEE AND CORPORATE COMPLIANCE OFFICER

Within ninety (90) days of the date of execution of this Agreement, the respective Boards of Directors of the Hospitals shall: (i) direct the creation of a Corporate Compliance Committee (the "Compliance Committee"); (ii) charge the Compliance Committee with the responsibility to establish and implement the Program; and (iii) appoint an individual to serve as the Compliance Officer (CO).

The members of the Compliance Committee shall be appointed by the respective Presidents of the Hospitals, and shall include the Compliance Officer, the Chief Financial Officer, an outside Director and any others that the Hospitals deem appropriate.

The Compliance Officer shall chair the Compliance Committee and shall be responsible for the day-to-day activities engaged in by the Hospitals to further the operations of the Program.

The respective Compliance Officer shall submit annual reports (or more

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frequent, if circumstances require) to the CRO of DCNHS who shall be responsible for submitting such reports to OIG's Office of Counsel to the Inspector General ("OCIG") of the United States Department of Health and Human Services ("HHS") in accordance with the terms of this Agreement.

B. REVIEW AND AUDIT OF BILLING PROCEDURES

The Hospitals shall, on an annual basis, contract with an independent professional organization, such as an accounting, law or consulting firm with expertise in Medicare's billing policies, procedures and practices, to review and audit the billing policies, procedures and practices of the Hospitals. The Hospitals shall select the independent professional review organization within one hundred twenty (120) days of the date of execution of this Agreement. DCNHS' Interim Report shall provide the name of the auditor and the proposed start and completion date of the first audit for the Hospitals. The audits should be designed to determine the accuracy, validity and appropriateness of the claims submitted for reimbursement to Medicare, Medicaid and all other federal health care programs. The audits shall select a statistically valid random sample of claims from each of the Hospitals' locations where they conduct business. The audits shall be conducted in accordance with OIG's publication "Office of Audit Services Policies and Procedures."

Generally, if any of these annual reviews and audits uncover billing policies, procedures and/or practices that result in material billing deficiencies, the Hospitals shall notify the Medicare intermediary within thirty (30) days of discovering the deficiency and should provide the intermediary with the following: (i) the methodology as to how the overpayment was determined; (ii) any claim specific information used to determine the overpayment; (iii) a check for the overpayment, and (iv) a notice to the intermediary that the repayment is being made in accordance with this Agreement. The Hospitals shall take remedial steps within sixty (60) days (or such additional time as may be agreed to by the intermediary) to correct the problem, including preventing the deficiency from recurring. For purposes of this Agreement, a "material billing deficiency" shall mean anything that has a significant, adverse financial impact upon the Medicare and/or Medicaid programs, which may be the result of an isolated event or a series of occurrences, and which lacks conformity with Medicare and

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Medicaid statutes, regulations and written directives and reimbursement principles issued by the Health Care Financing Administration ("HCFA") and its agents.

Contemporaneous to the Hospitals' notification to the Medicare intermediary as provided above, the Hospitals shall notify the CRO of DCNHS who shall be responsible for notifying OCIG of: (i) their findings concerning the material billing deficiency including the amount of any overpayments; (ii) the Hospitals' actions to correct such material billing deficiency, and (iii) any further steps the Hospitals plan to take to address such material billing deficiency and prevent it from recurring.

While this reporting requirement focuses on occurrences having a "significant," adverse financial impact, this provision does not excuse the Hospitals' statutory obligation as a Medicare participant to bring any other billing deficiencies, however de minimis, to a payor's attention, make appropriate refunds and take any steps necessary to prevent the occurrence in the future.

C. Treatment of Discounts

The Hospitals shall, upon request, provide to HHS/OIG all documentation relating to the Hospitals' policies and procedures concerning discounts, including information to be retained on tape or diskettes if necessary so that when the computer system is purged a complete audit trail continues to be preserved. In addition, the Hospitals will implement procedures to ensure the accurate tracking of discounts, in accordance with applicable Medicare, Medicaid and other federal health care programs laws, regulations and program requirements. A report which tracks discounts shall be prepared monthly, and will be reviewed and monitored by appropriate personnel. This report shall reflect the source and amount of the discounts. The Hospitals shall undertake an annual review of their treatment of discounts as they relate to the preparation of claims, bills and cost reports submitted to HCFA. The results of these annual reviews will be submitted to the CRO of DCNHS who shall submit them to HHS/OIG no later than 45 days following the completion of the reviews.

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Within one hundred twenty (120) days of the date of execution of this Agreement, the Hospitals shall develop and implement written policies regarding their commitment to accurate billings consistent with published Medicare and Medicaid regulations and procedures or other written communications from HCFA or its agents.

These policies shall be adopted by the Hospitals' respective Boards of Directors and distributed to all employees and independent contractors involved in submitting or preparing bills or claims on behalf of the Hospitals to the Medicare, Medicaid or other federal health care programs. The Hospitals shall post in a prominent place accessible to each employee a notice detailing their commitment to comply with all applicable Medicare and Medicaid statutes, regulations, written directives and program requirements in the conduct of their businesses. A copy of the policies and notices will be available, upon request, for review by OIG or its duly authorized representative.

E. INFORMATION AND EDUCATION

Within one hundred twenty (120) days of the date of execution of this Agreement, the Hospitals shall develop an information and education program designed to ensure that each officer, director and employee who is involved directly or indirectly in the preparation or submission of claims for reimbursement to the Medicare, Medicaid and other federal health care programs, is aware of all applicable Medicare and Medicaid statutes, regulations and written HCFA directives. The information and education program should also convey the standards of business conduct that each individual is expected to follow and the consequences both to the individual and the Hospitals that will ensue from any violation of these requirements.

The information and education program shall provide for no less than three (3) hours of formal training on an annual basis in: (i) the Corporate Integrity Program; (ii) the submission of accurate bills for services rendered

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to Medicare and/or Medicaid patients; (iii) the personal obligation of each individual involved in the billing process to ensure that such billings are accurate; (iv) applicable reimbursement rules and laws; and (v) the legal sanctions for improper billings and (vi) examples of improper billing practices. The Hospitals shall certify that such training has been provided in their Annual Report to OCIG, in accordance with section V. below. Information concerning the format, dates, and a copy of the materials provided will be available, upon request, for review by OIG.

The above- described training requirements shall be included in the formal orientation for new employees.

F. CONFIDENTIAL DISCLOSURE PROGRAM

Within ninety (90) days of the date of execution of this Agreement, the Hospitals shall establish a confidential disclosure program enabling employees to disclose any practices or billing procedures alleged by the employee to be inappropriate, to an identified individual not in that employee's direct chain of command. The Hospitals shall, as part of this disclosure program, require the internal review of any disclosure that is sufficiently specific so that it: (i) permits a determination of the appropriateness of the billing practice alleged to be involved; and (ii) reasonably permits corrective action to be taken and ensure that proper follow-up is conducted. In an effort to address every disclosure, however, the Hospitals shall, in good faith, make a preliminary inquiry for every disclosure instance to ensure they have obtained all of the necessary information that is reasonably required to determine whether an internal review, in accordance with the language above, should be conducted. The Hospitals agree that they will not take any retaliatory or adverse actions against any employee who makes a confidential disclosure and that, to the extent possible, they will protect the anonymity of the person making the disclosure. This section does not preclude the Hospitals from taking disciplinary action (up to and including termination) against an employee for actions or conduct unrelated to the making of the confidential disclosure.

The Hospitals shall include in their Annual Report to OCIG a summary of communications received from the Confidential Disclosure Program and

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the results or status of any investigations performed as a result of these disclosures. OCIG will endeavor to afford the information furnished by the Hospitals regarding the disclosure program the utmost confidentiality, subject to federal laws, such as the Freedom of Information Act. To the extent feasible, and at OCIG's option, OCIG may also review the documentation on the Hospitals' premises. In turn, the Hospitals agree to maintain such reports in a manner agreeable to OCIG so that they will be readily available to OCIG for a minimum of six (6) years or one (1) year longer than the duration of this Agreement.

G. DEALING WITH EXCLUDED OR CONVICTED PERSONS OR ENTITIES

Within ninety (90) days of the date of the execution of this Agreement, the Hospitals shall implement a written internal operating policy that the Hospitals shall not knowingly employ, with or without pay, an individual or entity that is listed by a federal agency as excluded, suspended or otherwise ineligible for participation in federal programs. In order to carry out the policy, the Hospitals shall make a reasonable inquiry into the status of any current or potential employee or consultant. Such a reasonable inquiry shall include, at a minimum, a review of the OIG's Cumulative Sanctions Report and the General Services Administration's ("GSA's") List of Parties Excluded from Federal Procurement and Non-Procurement Programs. Among other places, these reports can be found in the "Internet" at www.dhhs.gov/progorg/oig and www.arnet.gov/epls, respectively.

It is understood that the Hospitals' policy need not require the Hospitals to terminate the employment of individuals who become proposed for exclusion or suspension during their employment with the Hospitals. The Hospitals will, upon discovery of such event, remove such employees from responsibility for, or involvement with, the Hospitals' Medicare, Medicaid and other federal health care programs' business operations until the resolution of such proposed exclusion or suspension. If any employee of the Hospitals is charged with a criminal offense relating to its Medicare, Medicaid or other federal health care program business, the Hospitals will, upon discovery of such event, remove that employee immediately from responsibility for or involvement with the Hospitals' Medicare, Medicaid or other federal health care program business affairs. If the employee is

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convicted or debarred, the Hospitals' policy will require that the employee be terminated from employment with the Hospitals. The Hospitals shall notify the CRO of DCNHS who shall notify OCIG of each such personnel action taken and the reasons therefore, within fifteen (15) days of the action.

The Hospitals shall not knowingly allow, or cause to be allowed, any person convicted in any local, state or federal court of any felony involving health care matters to hold the position of officer or director of the Hospitals, or any of their subsidiaries either through an employment agreement or an independent contract.

Should the Hospitals discover that they have employed an individual in contravention of this provision, the Hospitals will have thirty (30) days to take the necessary steps to cure the problem, in accordance with this section and section X. below.

H. REPORTING ON INVESTIGATIONS

Within fourteen (14) days of becoming aware of the existence of any investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that the Hospitals have committed a crime or have engaged in fraudulent activities, the Hospitals shall notify the CRO of DCNHS who shall notify OCIG within fourteen (14) days of receiving such information. The notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Within fourteen (14) days of the resolution of the investigation or legal proceeding, the Hospitals shall notify the CRO of DCNHS, who shall notify OCIG within fourteen (14) days of receiving such information, identifying the findings or results of the investigation or legal proceeding.

IV. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other right OIG may have by statute, regulation, contract or pursuant to this Agreement, OIG or its duly authorized representative(s) may examine the Hospitals' books, records, and other company documents and supporting materials for the purpose of verifying and evaluating: (i) the Hospitals'

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compliance with the terms of this Agreement; and (ii) the Hospitals' compliance with the requirements of the Medicare, Medicaid and other federal health care programs. The documentation described above shall be made available by the Hospitals at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its authorized representative(s) may interview any of the Hospitals' employees who consent to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. The Hospitals agree to assist OIG in contacting and arranging interviews with such employees upon OIG's request. The Hospitals' employees may elect to be interviewed with or without a representative of the Hospitals present.

V. REPORTS

The CRO of DCNHS shall be responsible for the submission of all reports and notifications to OCIG as required by this Agreement. If any of the hospitals comprising the Hospitals as designated in this Agreement become unaffiliated with DCNHS during the term of this Agreement, the corporate responsibility officer for the unaffiliated hospital shall be responsible for the submission of reports and notifications required by this Agreement.

A. Interim Report

Within one hundred eighty days (180) of the execution of this Agreement, the CRO of DCNHS shall submit to OCIG the Interim Reports as required by section III. of this Agreement. As part of this Interim Report, the CRO will submit the names of the respective Compliance Officers and members of the Compliance Committees for the Hospitals.

B. Annual Reports

The Hospitals shall make Annual Reports (each one of which is referred to throughout this Agreement as the "Annual Report") to OCIG describing the measures the Hospitals have taken to implement the Corporate Integrity Program and ensure compliance with the terms of this Agreement. In accordance with the provisions above, the Annual Report shall include the following:

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1. In the first Annual Report, copies of the document or documents that comprise the Hospitals' Corporate Integrity Program established under section III. of this Agreement as adopted by the Hospitals' respective Boards of Directors and implemented by the Corporate Compliance Committees. For subsequent years, the Hospitals shall note in the Annual Report any amendments or revisions to the Program documents made during the year covered by the Annual Report.
2. The methodologies used and the findings of the reviews and audits conducted pursuant to section III. B. of this Agreement relating to the year covered by the Annual Report, a summary of the disclosure or notice documents made by the Hospitals pursuant to this section, a description of the corrective actions taken, the total amount of identified overpayments, and proof of the refund(s) to the pertinent payor(s) (where applicable).
3. A summary of the annual review of the Hospitals' treatment of discounts as required by section III. C. of this Agreement.
4. A description of the training programs implemented pursuant to section III. E. of this Agreement and a summary of the activities performed in furtherance of the training programs, including a schedule and topic outline of the training sessions. The CROs of the respective component hospitals shall submit a certification that all affected employees have attended the training.
5. A summary of communications received from the Confidential Disclosure Program established pursuant to section III. F. and the results or status of any investigations performed as a result of any disclosures.
6. A summary of the background inquiries conducted pursuant to section III. G. of this Agreement and any personnel actions taken (other than hiring) as a result of these inquiries.

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7. A summary of any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that the Hospitals have committed a crime or have engaged in fraudulent activities. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding as required by section III. H. of this Agreement.
8. The names of the Hospitals' officers, directors and Compliance Committee members.
9. A resolution (or its equivalent) from the Hospitals' respective Boards of Directors certifying that they have reviewed the Annual Report and have made reasonable inquiry regarding its content and believe that, upon inquiry, the information is accurate and truthful.

Where applicable, the report shall include a statement that no events identified in subparagraphs 1 through 7 of this section occurred. Each Annual Report shall be submitted to OCIG sixty (60) days after the anniversary date of the execution of this Agreement.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated, subsequent to the execution of this Agreement, all notifications and reports required under the terms of this Agreement shall be submitted, in writing, to the following:

If to OCIG:

U.S. Department of Health and Human Services
Office of Counsel to the Inspector General
Civil Recoveries Branch - Compliance Unit
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, D.C. 20201
Telephone: 202.619.2078
Fax: 202.205.0604

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If to the Hospitals or DCNHS:

David H. LeMoine
Corporate Responsibility Officer
Daughters of Charity National Health System
Bemiston Tower, Suite 310
231 South Bemiston Avenue
St. Louis, Missouri 63105
Telephone: 314.802.2001
Fax: 314.802.2020

VII. DOCUMENT AND RECORD RETENTION

The Hospitals shall maintain for inspection, documents and records relating to Medicare and Medicaid reimbursement for a period of six (6) years or one (1) year following the execution of this Agreement.

VIII. STIPULATED PENALTIES

The Hospitals' and DCNHS' compliance with the terms and conditions of this Agreement, shall constitute an element of the Hospitals' and DCNHS' present responsibility with regard to participation in Medicare, Medicaid and other federal health care programs. Pursuant to section XV. of this Agreement, any and all modifications to this Agreement (including changes to dates on which an obligation is due to be met) shall be requested in writing and agreed to by OIG in writing prior to the date on which the modification is expected to take effect. Absent such written modifications, the Hospitals and DCNHS agree to the following stipulated penalties.

- A. The Hospitals or DCNHS, as appropriate, shall pay a stipulated penalty of \$2,500 for each day they fail to comply with any of the following terms, which stipulated penalty shall begin to accrue one day after the date the obligation becomes due.
 - 1. The creation of a Corporate Compliance Committee and the appointment of Corporate Compliance Officer within ninety (90) days of the execution of this Agreement;

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2. Submission of the Interim Report within one hundred eighty (180) days of the execution of this Agreement;
 3. Submission of the Annual Report by the due date required in section V. of this Agreement;
 4. Establishment of a confidential disclosure program within ninety (90) days of the execution date of this Agreement.
- B. A stipulated penalty of \$2,500 for each day the Hospitals fail to comply by having fully in force during the term of this Agreement any of the following, which stipulated penalty shall begin to accrue on the date of receipt of the OIG's notice of noncompliance or as otherwise indicated in OIG's notice in accordance with section IX. below.
1. Implementation and maintenance of the written Corporate Integrity Policy, as required by section III. D. of this Agreement;
 2. Granting access to the information or documentation necessary to exercise OCIG's inspection, audit and review rights, as set forth in section IV. of this Agreement;
 3. Implementation and maintenance of the information and education program, as required by section III. E. of this Agreement;
 4. Notification to OCIG of the existence or conclusion of any investigation or legal proceeding, as required by section III. H. of this Agreement.
- C. The Hospitals shall pay a stipulated penalty of \$1,500 for each day they employ an individual after that individual has been listed by a federal agency as debarred, suspended or otherwise ineligible for federal health care program participation. This stipulated penalty shall not be applied if the Hospitals can demonstrate that they made a reasonable inquiry, as described in Paragraph III. G. of this Agreement, into the current or potential employee's or consultant's status. This penalty shall begin to accrue upon the Hospitals' receipt of OIG's notice of noncompliance or as otherwise indicated in OIG's notice in accordance with section IX. below.

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- D. The Hospitals or DCNHS shall pay a stipulated penalty of \$500 per day for each violation of any other requirement of this Agreement which is not covered by the stipulated penalties in subparagraphs A., B. and C. above, which stipulated penalty shall begin to accrue on the date of receipt of OIG's notice of noncompliance or as otherwise indicated in OIG's notice in accordance with section IX. below.

IX. PAYMENT OF STIPULATED PENALTIES

Upon finding that the Hospitals or DCNHS have failed to comply with any of the above-enumerated obligations, OIG shall notify DCNHS by certified mail of: (i) the Hospitals' or DCNHS' failure to comply; and (ii) OIG's exercise of its contractual right to demand payment of the stipulated penalties payable under this Agreement (this letter is hereinafter referred to as the "Demand Letter"). The applicable stipulated penalties shall begin to accrue on the date specified in section VIII., which date shall be indicated in the Demand Letter.

Upon receipt of the Demand Letter, DCNHS shall do either of the following: (i) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (ii) request a hearing before an HHS administrative law judge to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth in section XI. of this Agreement.

Payment of the stipulated penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OCIG at the address set forth in section VI. of this Agreement.

These provisions for payment of stipulated penalties shall not affect or otherwise set a standard for the OIG's determination that the Hospitals or DCNHS have materially breached this Agreement, which decision shall be made at the OIG's discretion and governed by the provisions in section X. of this Agreement.

If OIG makes a determination to impose stipulated penalties in accordance with this provision, the Hospitals or DCNHS shall have the right to dispute OIG's determination in accordance with the agreed upon provisions set forth in section XI. of this Agreement.

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X. REMEDIES FOR MATERIAL BREACH OF THIS AGREEMENT

If the Hospitals engage in conduct that OIG determines to be a material breach of this Agreement, OIG may seek exclusion of the Hospitals from participation in the Medicare, Medicaid and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon making its determination, OIG shall notify DCNHS of the alleged material breach by the Hospitals by certified mail and of its intent to exclude as a result thereof (this letter shall be referred to hereinafter as the "Intent to Exclude Letter"). The Hospitals shall have thirty-five (35) days from the date of receipt of the letter to proceed as follows:

- (1) cure the alleged material breach; or
- (2) demonstrate to the OIG's satisfaction that: (a) the Hospitals are in full compliance with this Agreement; or (b) the material breach cannot be cured within the thirty-five (35) day period, but that the Hospitals have begun to take action to cure the material breach, that the Hospitals will pursue such an action with due diligence, and that the Hospitals will give the OIG a timetable for curing the material breach.

If at the conclusion of the thirty-five-day period (or other specific period as subsequently agreed by OIG and the Hospitals), the Hospitals (or any component hospital thereof) fail to cure the material breach to OIG's satisfaction, the Hospitals (or any component hospital thereof) agree to immediate exclusion from participation in the Medicare, Medicaid and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). The exclusion shall have national effect and will also apply to all other federal procurement and non procurement programs.

For purposes of this section, a "material breach" is defined as follows: (i) a failure to report a material billing deficiency, take corrective action and pay the appropriate refunds, as provided in section III. B. of this Agreement; or (ii) repeated or flagrant violations of the obligations under this Agreement, including, but not limited to, the obligations addressed in section VIII. of this Agreement.

In connection with the OIG's determination to exclude the Hospitals (or any

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component hospital thereof) pursuant to this provision, the Hospitals shall have the right to dispute the OIG's determination in accordance with the agreed upon provisions set forth in section XI. of this Agreement.

XI. DISPUTE RESOLUTION

Upon OIG's delivery to DCNHS of its Demand Letter or of its Intent to Exclude Letter, and as an agreed upon contractual remedy for the resolution of disputes arising under the obligation of this Agreement, DCNHS and the Hospitals shall be afforded review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the stipulated penalties or exclusion sought pursuant to this Agreement. Specifically, the OIG's determination to demand payment of stipulated penalties or to seek exclusion shall be subject to review by an HHS administrative law judge in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. The administrative law judge's decision, in turn, may be appealed to HHS's Departmental Appeals Board ("DAB") in a manner consistent with the provisions in 42 C.F.R. § 1005.21.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues to be decided in a proceeding for stipulated penalties under this section shall be the following: (i) whether the Hospitals and DCNHS were in full and timely compliance with the obligations of this Agreement for which OIG demands payment; (ii) whether the Hospitals or DCNHS failed to cure; and (iii) the period of noncompliance. The Hospitals and DCNHS shall have the burden of proving that they were in full and timely compliance and the steps taken to effect the cure, if any. The OIG shall have the burden of proving the Hospitals' or DCNHS' failure to cure. For purposes of paying stipulated penalties under this Agreement, and if the Hospitals or DCNHS choose to seek review in lieu of curing the breach and paying the stipulated penalties, as set forth above, the administrative law judge's decision shall give rise to the Hospitals' or DCNHS' obligation to pay. Thus, payment will be due immediately after the issuance of the administrative law judge's decision. The Hospitals' or DCNHS' election of their contractual right to appeal to the DAB shall not excuse their obligation to make payment upon the issuance of the administrative law judge's decision.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues to be decided in a

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proceeding for exclusion based on a breach of this Agreement shall be the following: (i) whether the Hospitals (or any component hospital thereof) were in material breach of one or more of their obligations under this Agreement; and (ii) whether such breach was continuing on the date of the Intent to Exclude Letter. For purposes of the exclusion herein agreed to in the event of breach of this Agreement, the administrative law judge's decision shall be deemed to make the exclusion effective, at which time the OIG may proceed with its exclusion of the Hospitals (or any component hospital thereof), if the administrative law judge finds in favor of the OIG. The administrative law judge's decision may be appealed to the DAB in a manner consistent with the provisions in 42 C.F.R. § 1005.21. Upon the conclusion of any period of exclusion, the Hospitals may apply for reinstatement in accordance with 42 C.F.R. § 1001.3001.

Neither the review by an administrative law judge nor the potential subsequent review of the administrative law judge's decision by the DAB, as provided for above, shall be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this Agreement agree that the DAB's decision shall be considered final for all purposes under this Agreement and agree that they waive any right that they may have to appeal either administratively or judicially or otherwise to any court or other adjudicative forum.

All notices required under any of the aforementioned proceedings shall be given to the OIG in accordance with section VI. of this Agreement.

XII. COSTS RELATED TO ADDITIONAL AUDITS

In addition to the obligations assumed by the Hospitals under this Agreement and as described above, if OIG determines that it is necessary to conduct an independent audit or review to determine whether or the extent to which the Hospitals are complying, if at all, with their obligations under this Agreement, the Hospitals agree to pay for the reasonable costs of any such audit or review by the OIG or its duly authorized representative.

XIII. UNALLOWABLE COSTS

It is agreed that all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47) and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd and 1396-1396v (1997), and the regulations

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promulgated thereunder) incurred by or on behalf of the Hospitals or DCNHS in connection with (a) the matters covered by this Corporate Integrity Agreement; (b) the government's audits and investigations of the allegations which are the subject of this Agreement; (c) any of the Hospitals' or DCNHS' investigative, defense and corrective actions with respect to matters specifically covered by this Agreement, and (d) the negotiation of this Agreement, shall be unallowable costs for government contract accounting purposes and for purposes of seeking reimbursement from either the Medicare, Medicaid or other federal health care programs. The Hospitals and DCNHS shall account separately for these costs for government contract accounting purposes and for purposes of seeking reimbursement from the Medicare and other federal health care programs. Any sums owed by the Hospitals or DCNHS to the United States for payments made to the Hospitals or DCNHS by Medicare and/or Medicaid (federal share) for costs that are unallowable (as defined in this paragraph) shall be paid by the Hospitals or DCNHS to HHS at HHS' discretion.

XIV. PRIVILEGES AND DISCLOSURES

Nothing in this Agreement shall constitute or be construed as a waiver by the Hospitals and DCNHS of their attorney-client or other applicable privileges. Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify the Hospitals or DCNHS prior to any release by OIG of information submitted by the Hospitals or DCNHS pursuant to their obligations under this Agreement and identified upon submission by the Hospitals or DCNHS as trade secrets and commercial or financial information and privileged or confidential under the FOIA rules. The Hospitals and DCNHS shall refrain from identifying any information as trade secrets and commercial or financial information and privileged or confidential that does not meet the criteria for exemption from disclosure under FOIA.

XV. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the settlement agreement pursuant to which this Agreement is entered, and into which this Agreement is incorporated, the Hospitals and the OIG agree as follows:

1. this Agreement shall be binding on the successors, assigns and transferees of the Hospitals;


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2. this Agreement shall become final and binding only upon signing by each respective party hereto;
3. any modifications to this Agreement shall be made with the prior written consent of the parties to this Agreement; and
4. the undersigned signatories for the Hospitals and DCNHS represent and warrant that they are authorized to execute this Agreement. The undersigned United States signatory represents that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement.

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THE HOSPITALS**OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Date

7/24/98

Lewis Morris, Esquire

Assistant Inspector General

Office of Counsel to the Inspector General

Office of Inspector General

U. S. Department of Health and Human
Services

THE HOSPITALS

As Agreed By:

7-23-98
Date

The Hospitals

Patrick J. Madden
Patrick J. Madden
President & Chief Executive Officer
Secord Heart Hospital, Pensacola, Florida

Date

John F. Tighe
John F. Tighe
President & Chief Executive Officer
St. Thomas Hospital, Nashville, Tennessee

Date

Vincent C. Caponi
Vincent C. Caponi
President & Chief Executive Officer
St. Vincent's Hospital, Birmingham, Alabama

Date

Frederic L. Fraizer
Frederic L. Fraizer
President & Chief Executive Officer
St. Mary's Hospital, Saginaw, Michigan

Date

Donald A. Brennan
Donald A. Brennan
President & Chief Executive Officer
Daughters of Charity National Health System

Date

E. Michael Flanagan, Esquire
E. Michael Flanagan, Esquire
Counsel for Daughters of Charity National
Health System

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As Agreed By:

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Date

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President & Chief Executive Officer
St. Mary's Hospital, Saginaw, Michigan

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Donald A. Brown
President & Chief Executive Officer
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Counsel for Daughters of Charity National
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for Vincent C. Caponi
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Daughters of Charity National Health System

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B. Michael Flanagan, Esquire
Counsel for Daughters of Charity National
Health System

07/21/98 MON 15:28 FAX 202
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SMN ADMINISTRATION
CHON

TEL: 617 776 1700
NO. 526
P. 01/418803

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R. Michael Flanagan, Esquire
Counsel for Daughters of Charity National
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